

### REMARKS

Figure 3 and the specification were amended to be consistent with claim 1 as originally filed. No new matter was introduced. Applicant respectfully requests the objection to Figure 3 be withdrawn.

Claims 1-18 stand rejected under 35 U.S.C. § 112 as being indefinite. Claims 1 and 8 were clarified to recite that the first layer is a patterned layer. Applicant respectfully requests the rejection of claims 1-18 be withdrawn.

Claims 1-18 stand rejected under 35 U.S.C. § 103(a) as being obvious over United States Patent No. 6,458,605 (Stirton). The invention as set forth in amended independent claims 1 and 8 includes the general features measuring a first overlay error associated with a first patterned layer, forming a second layer on the selected wafer, and determining at least one parameter of an operating recipe for performing a photolithography process on the second layer of the selected wafer based on at least the first overlay error measurement. The measured overlay error of the first patterned layer may be used to determine photolithography settings for patterning the second layer in a feedforward manner to account for that error.

Stirton determines overlay between the first and second layers, not using the overlay error from the first layer to adjust the patterning of the second layer. Moreover, the instant application is assigned to Advanced Micro Devices, Inc. At the time of the instant invention, the Stirton patent was also assigned to Advanced Micro Devices, Inc. Because the instant application and the cited patent were commonly owned at the time of the invention, Applicants are entitled under 35 U.S.C. § 103(c) to disqualify Stirton as prior art under 35 U.S.C. § 103(a). As the rejection of claims 1-18 is thus moot, Applicants take no position regarding the patentability of these claims in view of the cited art. Applicants respectfully request the rejection of these claims be withdrawn.

The Examiner is invited to contact the undersigned attorney at (608) 833-0748 with any questions, comments or suggestions relating to the referenced patent application.



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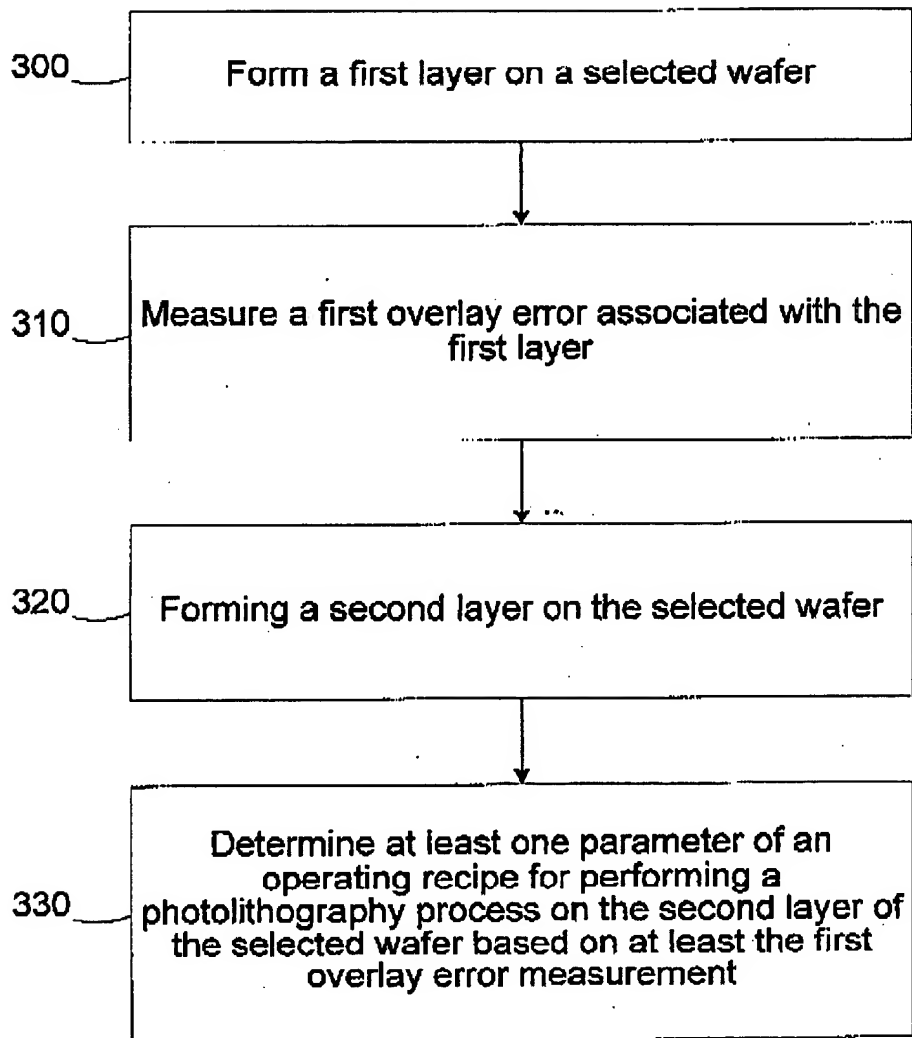
Respectfully submitted,

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**Bode et al.****3 / 3****Figure 3**